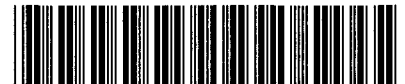


ORIGINAL



0000128301

BEFORE THE ARIZONA CORPORATION COMMISSION

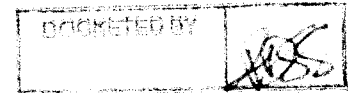
COMMISSIONERS

GARY PIERCE, Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

Arizona Corporation Commission

DOCKETED

AUG 15 2011



In the matter of:

RADICAL BUNNY, L.L.C., an Arizona
limited liability company,

HORIZON PARTNERS, L.L.C., an Arizona
limited liability company,

TOM HIRSCH (aka THOMAS N. HIRSCH)
and DIANE ROSE HIRSCH, husband and
wife,

BERTA FRIEDMAN. WALDER (aka
BUNNY WALDER), a married person,

HOWARD EVAN WALDER, a married
person,

HARISH PANNALAL SHAH and
MADHAVI H. SHAH, husband and wife,

Respondents.

DOCKET NO. S-20660A-09-0107

**SECURITIES DIVISION'S OPPOSITION TO
RESPONDENTS' MOTION TO REOPEN
HEARING AND TO ADD EVIDENCE TO
THE RECORD**

(Assigned to the Hon. Lyn Farmer)

RECEIVED
2011 AUG 15 A 10:35
SECURITIES DIVISION
DOCKET CONTROL

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") hereby responds in opposition to the Respondents' Motion to Reopen Hearing and to Add Evidence to the Record ("Motion to Reopen Hearing"). Respondents request that the hearing be reopened because some evidence exists, purportedly unbeknownst to them at the time of the administrative hearing in these proceedings, which will shed doubt on the credibility of one of the Division's witnesses, Quarles and Brady attorney Christian J. Hoffmann, III ("Hoffmann"). As such, Respondents request the Administrative Law Judge to reopen the administrative hearing to

allow (1) Respondents to further cross-examine Hoffmann; and (2) additional testimony¹ on (a) the “subject of the attached documents” (“Motion Exhibit”) to the Motion to Reopen Hearing and (b) “related events as the Respondents choose to present.” *See* Motion to Reopen Hearing at 3:16-23. The Division opposes all of the Respondents’ requests because the Motion Exhibit has been known to the Respondents and available for their use at all times since May 21, 2007. As such, the Respondents had ample opportunity to present this documentary evidence as well as to elicit testimony from as many witnesses regarding any subject of these proceedings as they chose over the course of the twelve day administrative hearing, which concluded more than eight months ago. Accordingly, the Motion to Reopen Hearing should be denied.

ARGUMENT

In support of their motion, the Respondents attach the Motion Exhibit -- two facsimiles from Mr. Hoffmann addressed to “Tom Hirsch, et al” at Radical Bunny, both dated May 21, 2007. The first facsimile was sent by Mr. Hoffmann at 7:22:06 PM and included a 6 page attachment entitled “Participation Agreement.” *See* Motion Exhibit at RBOC025516-RBOC025522. The second facsimile was sent at 7:25:16 PM and included a 4 page attachment, which attachment was not included as part of the exhibit to the Motion to Reopen Hearing.² *See* Motion Exhibit at RBOC025523. Based solely on unsubstantiated and irrelevant accusations as to why the Motion Exhibit was not produced by Quarles & Brady³ (“Quarles”) to the United States Securities and Exchange Commission (“SEC”) as part of regulatory enforcement investigations by the SEC and the Division, the Respondents make the request to be granted extraordinary relief. *See* Motion to

¹ Respondents do not disclose the identity of the additional witnesses they purport were unavailable to testify at the time of the administrative hearing or from whom they would like to elicit testimony on either the subject of communication(s) between members of the law firm of Quarles & Brady and the RB Managers or “related events.”

² A copy of the attachment to the second facsimile is included with Opposition Motion Exhibit A. *See* Opposition Motion at RBOC024637-RBOC024640. Opposition Exhibit A is a true correct copy of Exhibits G through H-2 to the Plaintiffs’ Proposed Amended Complaint filed on July 1, 2011, as Document Nos. 217-7 through 217-9 in the official court docket for the matter entitled *Facciola, et al v. Greenberg Traurig, LLP*, case no. 2:10-cv-01025-MHM, currently pending in the United States District Court for the District of Arizona (the “Class Action”).

³ The references to Quarles & Brady include its attorneys, Messrs. Hoffmann, Robert (“Bob”) Bornhoft, S. Gary (“Gary”) Shullaw, and Robert (“Bob”) Moya.

1 Reopen Hearing at 2:15-26. This request is completely unwarranted because the *only reason* why
2 the Respondents did not have an opportunity to cross-examine Hoffmann and/or elicit testimony
3 from any other witnesses regarding the Motion Exhibit during the administrative hearing was
4 because the *Respondents* failed to exercise reasonable diligence in retaining or obtaining copies of
5 the business records of Radical Bunny. The Respondents failed to keep a copy of the Motion
6 Exhibit when it was originally provided by one or more of the Respondents to the attorneys for
7 Radical Bunny ("Radical Bunny attorneys"), or to request a copy of the business records of Radical
8 Bunny from the Radical Bunny attorneys at any time since the termination of their relationship
9 with Quarles. If the Respondents had done so, then they would have known that the RB Managers
10 and the Radical Bunny attorneys have been in possession of at least two different copies⁴ of the
11 Motion Exhibit *since May 21, 2007*. Compare Opposition Exhibit A at RBOC024629-
12 RBOC024635 with the Motion Exhibit at RBOC025516-RBOC025522.

13 In their motion, the Respondents first acknowledge that they did, in fact, receive "what
14 purported to be the entire Quarles & Brady [client] file," presumably from either Quarles or from
15 the SEC ("Q&B RB File"). See Motion to Reopen Hearing at 2:19; Opposition Exhibit B, Exhibit
16 2 at pp.4-5 (Exhibit 1 omitted and Exhibit 2 were redacted in the interest of privacy). Respondents
17 maintain that the Motion Exhibit was not contained in the Q&B RB File. The Division was
18 unaware of the existence of the Motion Exhibit and Opposition Exhibit A until the filing of the
19 Motion to Reopen Hearing. However, it is not the omission of the Motion Exhibit from the Q&B
20 RB File that is relevant; rather, it is the conduct on the part of Respondents which precluded its use
21 at the administrative hearing.

22 By Respondents' own admission, the Motion Exhibit was in the possession of the "Trustee"
23 in the RB Bankruptcy, G. Grant Lyon ("Grant Lyon"). See Motion to Reopen Hearing at 2:22-26;
24 Hearing Exhibit S-40 at pp. 1-2. Interestingly, the Respondents state that the Motion Exhibit was
25

26 ⁴ Each version of a draft document authored by Quarles & Brady is coded, which code is found at the lower left-hand corner of the document. See e.g., Motion Exhibit at RBOC025517 and Opposition Exhibit A at RBOC024630.

1 obtained "when the lawyers for the Class Action Plaintiffs obtained access to the files of the
2 Radical Bunny Trustee." *See* Motion to Reopen Hearing at 2:22-26. However, Grant Lyon never
3 had copies of the business Records of Radical Bunny. *See* Opposition Exhibit C. The business
4 records of Radical Bunny have been in the possession of DeConcini McDonald Yetwin & Lacy,
5 P.C. ("DMYL") since it began its representation of Radical Bunny in June 2008. *See* Opposition
6 Exhibits C and D.⁵ The *only* logical conclusion is that DMLY obtained the Motion Exhibit and
7 Opposition Exhibit A from one of the Respondents, either directly or from their counsel.

8 Quarles terminated its representation of Radical Bunny on June 10, 2008. *See* Hearing
9 Exhibit S-22(p). On June 30, 2008, Respondent Hirsch requested that Quarles "release the
10 complete Radical Bunny, LLC file to Shelton L. ["Tony"] Freeman of DeConcini McDonald
11 Yetwin & Lacy, P.C., attorney for Radical Bunny." *See* Opposition Exhibit E. Quarles released a
12 copy of the Q&B RB File to DMYL who, in turn, shared a copy of the Q&B RB File to Bruce
13 Heurlin ("Heurlin"), the first attorney for the RB Managers in these proceedings. *See* Verified
14 Answer and Verified Answer, Exhibits 5-9; Hearing Exhibits S-18(a) and S-18(b). Mr. Hirsch's
15 request to Quarles was made, in part, in anticipation of Radial Bunny pursuing a legal malpractice
16 action against Quarles, which action was commenced on June 19, 2010, by DMYL and Heurlin as
17 attorneys for RB Liquidation, LLC ("Quarles Malpractice Action").⁶ *See* Opposition Exhibit F;
18 *see also*, Hearing Exhibits S-18(a), S-18(b), and S-40. Heurlin's representation of the Respondents
19 in these proceedings was terminated by Procedural Order on February 26, 2010. Again, the *only*
20 logical conclusion is that DMLY obtained the Motion Exhibit and Opposition Exhibit A from one
21 of the Respondents, either directly or from their counsel.

22
23
24 ⁵ Opposition Exhibit D is a true and correct copy of Notice of Lodging Stipulated Order Granting Application for
Order Allocating Proceeds of Substantial Contribution Claim to DeConcini, McDonald, Yetwin & Lacy, P.C. and RB
Liquidation, LLC filed on June 7, 2001, as Document no.1206 in the official court docket of the RB Bankruptcy.

25 ⁶ The Quarles Malpractice Action was removed by Quarles & Brady from Maricopa County Superior Court to the
26 United States Bankruptcy Court for the District of Arizona as case no. 2:10-ap-02104 CGC, which is currently pending
as an adversary proceeding in the RB Bankruptcy.

1 Respondents possessed a copy of the Motion Exhibit from May 21, 2007, until at least June,
2 2008. Thereafter, Respondents could have easily obtained a copy of all of the business records of
3 Radical Bunny, including the Motion Exhibit, from DMYL. The fact that the Motion Exhibit was
4 not available for use at the administrative hearing was due to the failure of the Respondents to
5 exercise reasonable diligence in either maintaining a copy of the Motion Exhibit or to request
6 access to the business records of Radical Bunny prior to the commencement of the administrative
7 hearing on October 14, 2010. Accordingly, the Respondents' motion should be denied.

8 RESPECTFULLY SUBMITTED this 15th day of August, 2011.

9
10 

11 Julie Coleman
12 Chief Counsel of Enforcement for the Securities
13 Division of the Arizona Corporation Commission

14 ORIGINAL and 13 copies of the foregoing
15 filed this 15th day of August, 2011, with:

16 Docket Control
17 Arizona Corporation Commission
18 1200 W. Washington St.
19 Phoenix, AZ 85007

20 COPY of the foregoing hand-delivered
21 this 15th day of August, 2011, to:

22 Lyn Farmer
23 Administrative Law Judge
24 Arizona Corporation Commission
25 1200 W. Washington St.
26 Phoenix, AZ 85007

COPY of the foregoing mailed
this 15th day of August, 2011, to:

Michael J. LaVelle
LAVELLE & LAVELLE, PLC
2525 E. Camelback Road, Suite 888
Phoenix, AZ 85016
Attorneys for Respondents

By: 

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

EXHIBIT A



One Renaissance Square
Two North Central Avenue
Phoenix, Arizona 85004-2391
602/229-5200
FAX: 602/229-5690

Attorneys at Law in
Milwaukee and Madison, Wisconsin
Phoenix and Tucson, Arizona
Chicago, Illinois
Naples, Florida

FAX TRANSMITTAL COVER SHEET

To: Tom Hirsch, et al.
Company: Radical Bunny
Fax number: 602-682-5154
Phone number: 602-682-5150
From: Christian J. Hoffmann, III
Phone number: 3336/5336
Sender's direct fax: 602-420-5008

New
for Accredited
Investors
Only

Number of Pages (including cover sheet): 07
Date & Time Faxed: Monday, May 21, 2007 7:22:06 PM
Client - Matter #: 128577.00002

Message:

Dear Tom, Bunny & Howard -

Attached for your review is a draft of the Participation Agreement we are recommending as an interim step. An investor would execute this each time a new loan is created with Mortgages Ltd to document the investor's participation in a portion of that loan.

We might be able to shorten the Accredited Investor questionnaire included in the Agreement a bit.

The fax following this one will contain disclosures about the Loan itself.

THE INFORMATION CONTAINED IN THIS MESSAGE IS PERSONAL AND CONFIDENTIAL
FOR THE RECIPIENT(S) NAMED ABOVE.
IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR,
PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND
RETURN THIS MESSAGE TO US BY MAIL. THANK YOU.

IN CASE OF ANY TRANSMISSION PROBLEM,
CALL (602) 229-5200

PARTICIPATION AGREEMENT

Reference is made to the Promissory Note No. ____ ("the "Note") dated as of _____, 2007 by and between Mortgages Ltd as the borrower under the Note (the "Borrower") and Radical Bunny, LLC as the lender ("Radical Bunny") relating to a loan (the "Loan") made by Radical Bunny to the Borrower in the principal amount of \$_____ and referenced as Loan No. _____. A copy of the Note is attached as **Exhibit A** to this Agreement. The Note is secured by certain assets of Mortgages Ltd as set forth in the Security Agreement, a copy of which is attached hereto as **Exhibit B** (the "Security Agreement").

Radical Bunny and _____ (the "Participant") hereby agree as follows:

1. Purchase. The Participant shall deposit with Radical Bunny \$_____ (the "Purchase Price") and Radical Bunny shall sell, assign and transfer to the Participant, upon receipt of the Purchase Price, an undivided _____% interest in and to all of Radical Bunny's rights and obligations with respect to the Note and the Security Agreement (collectively, the "Loan Documents").

2. Payment to Participant. Radical Bunny will, within seven (7) days of receipt of any payments of principal or interest on the Loan or any collection of realization upon the collateral securing the Loan, or other amounts received in respect of the Loan, pay such amounts directly to the Participant in accordance with the Participant's undivided percentage interest in the Loan, less the Administrative Fee set forth in Section 3 below. If the Borrower defaults in making payments due under the Note, the Participant agrees to pay reasonable costs and expenses, including legal and other professional fees, in connection with the enforcement of the Loan Documents and collection of any amounts owing under the Loan Documents. Radical Bunny agrees to consult with the Participant in advance of undertaking actions or incurring costs to collect the obligation represented by the Loan Documents, or realization upon the collateral securing the Loan, provided that Radical Bunny will make all final decisions respecting such actions or costs and the Participant will be bound by such decisions.

3. Administration Fee to Radical Bunny. The Participant shall pay Radical Bunny an Administration Fee of equal to two (2) percentage points of the interest the Borrower pays on the Note for Radical Bunny's services rendered in connection with the Note and this Agreement. For example, if the Note pays interest at the rate of twelve percent (12%) per annum, the Participant will receive ten percent (10%) per annum and Radical Bunny will receive two percent (2%) per annum as its Administration Fee. The Participant authorizes Radical Bunny to deduct the amount of the Administration Fee from the interest paid on the Note.

4. Representations of Radical Bunny. Radical Bunny represents and warrants that (i) it is legally authorized to enter into the Agreement (the "Agreement"); and (ii) it is the legal and beneficial owner of the interest being assigned under the Agreement and that such interest is free and clear of any adverse claim.

5. Representations of Participant. The Participant represents and warrants that (i) it is legally authorized to enter into the Agreement; and (ii) that it has received, read, understands

and completed the Loan Participation Disclosure Statement and Acknowledgment attached hereto as **Exhibit C** (the "Disclosure Statement"), along with such other documents and information as Participant has requested to make its own credit analysis and decision to enter into the Agreement.

6. **Attorney in Fact.** The Participant hereby appoints and authorizes Radical Bunny as its true and lawful agent and attorney-in-fact in the name, place and stead of the Participant and in the sole discretion of Radical Bunny (i) to take such action on behalf of the Participant and exercise such powers, including, but not limited to, making, executing, signing, acknowledging, answering to, delivering, filing and recording on behalf of Radical Bunny and the Participant such documents and instruments as Radical Bunny deems necessary or appropriate to carry out the provisions of the Agreement and the Loan Documents; and (ii) to enforce such rights of Radical Bunny and the Participant as Radical Bunny deems necessary or appropriate under the terms of the Loan Documents, including but not limited to, collection of, or realization upon, collateral securing the Loan or other amounts due to Radical Bunny and the Participant respecting the Loan. The Agreement shall not create a partnership, joint venture or other similar relationship between Radical Bunny and the Participant.

7. **Obligations of Radical Bunny.** Radical Bunny shall service the Note and the Loan Documents pursuant to this Agreement. Radical Bunny's duties shall include collecting, handling payments on the Note; transmitting such payments to Participant based on Participant's pro rata share; maintaining records; monitoring loan compliance on the part of the Borrower and enforcing any rights of Participant in Radical Bunny's sole discretion as set forth in Section 6. Additionally, Radical Bunny shall hold the original Loan Documents in its possession.

8. **Restrictions on Radical Bunny.** Radical Bunny agrees not to enter into any amendment to the Loan Documents affecting (i) the principal amount of the Note, (ii) the term or maturity of the Note or (iii) the rate of interest payable in respect of the Note, without the written consent of both the Participant and Radical Bunny.

9. **Assignment.** The Participant shall not assign Participant's interest in the Note without the written consent of Radical Bunny, which consent shall not be unreasonably withheld. In order for any such assignment to be effective, Participant's assignee must expressly agree to be bound by the terms hereof and must review and complete a copy of the Loan Participation Disclosure Statement and Acknowledgment attached as **Exhibit C**.

10. **Entire Agreement; Amendment; Waiver.** This Agreement supersedes any prior negotiations, discussions or agreements between the parties hereto and constitutes the entire agreement of the parties hereto with respect to the Loan Documents. No right or obligation under this Agreement may be amended or waived by any means except by an instrument in writing signed by the party against which enforcement of such amendment or waiver is sought.

11. **Counterparts.** This Agreement may be executed in multiple counterparts and by each of the parties hereto on separate counterparts, each of which shall be deemed an original and all of which shall be taken together to constitute one and the same document.

12. Governing Law. This Agreement is intended to be governed by and construed in accordance with the laws of the state of Arizona without reference to conflict of laws.

IN WITNESS WHEREOF, intending to be legally bound, each of the undersigned has caused the Agreement to be executed on _____, 2007.

Radical Bunny, LLC

By: _____

Title: _____

PARTICIPANT

Signature

Print Name

EXHIBIT A

Promissory Note

EXHIBIT B

Security Agreement

7034

EXHIBIT C

Loan Participation Disclosure Statement and Acknowledgments

7034

7034

LOAN PARTICIPATION DISCLOSURE STATEMENT AND ACKNOWLEDGMENTS

1. Acknowledgment of Documents Received

I acknowledge that I have received, read and understand the Note and Security Agreement that are the subject of the Participation Agreement (the "Agreement") to which this document is attached as Exhibit C.

2. Acknowledgment of Risks

I understand that participation in the Loan through the Agreement involves a number of risks. As a Participant in the loan made by Radical Bunny LLC ("Radical Bunny") to Mortgages Ltd, I have considered the risks relating to participation in such loan, including those described below, before entering into the Agreement.

- **Secured Loans.** The Participant will have an security interest in the Loan in that the Note is secured by a lien on the assets of Borrower as described in the Security Agreement. The collateral described in the Security Agreement secures not only the Participant's Note, but also other notes ("Term Notes") which are part of a revolving line of credit between Radical Bunny and Borrower. As such, upon an event of default of the Borrower, it may be necessary for Radical Bunny to foreclose on more than one Term Note at once. The Participant's right to the collateral under the Participant's Note, therefore, ranks *pari passu* with the rights of the holders of any other Term Notes being foreclosed. While the value of the collateral secured by the Security Agreement will exceed the amount of the outstanding Term Notes at the time any loan under a Term Note is made, there can be no assurance that the value of the collateral will not decline more rapidly than the outstanding balance of the outstanding Term Notes. The ability of Radical Bunny to recover the unpaid principal and interest due on the Loan from the sale of the collateral in the event of default might be impaired by such decline.
- **Defaults.** The Loan is subject to the risk that the Borrower may default on it. In the event of a default, Radical Bunny, as secured creditor, would initiate collection proceedings in accordance with the terms of the Note, including foreclosure on the collateral secured by the Security Agreement, to recover the outstanding balance due. There can be no assurance that Radical Bunny will obtain immediate possession Borrower's assets or the proceeds of sale without becoming involved in disputes with other creditors. Foreclosure actions respecting property and resolution of any disputes could result in a considerable cost to Radical Bunny and the Participant and last a significant period of time. Furthermore, there can be no assurance that the collateral could be sold at a price that would recover the outstanding balance of the obligation and costs of repossession. In such a case, Radical Bunny and the Participant would become unsecured creditors for any shortfall and could suffer a partial or total loss of capital, as well as a loss of any anticipated interest from the Loan if the personal guarantee, if any, from the Borrower was insufficient to pay its unsecured creditors.

- **Risks of Loans with Deferred Principal Payments.** The Note may defer all or certain payments of principal until maturity. Such deferral creates a risk that the Borrower may not have sufficient funds to repay the Loan at maturity or that the Borrower may experience difficulties in obtaining sufficient funds to repay the Loan at maturity.
- **Interest Limitations - Usury.** The amount of interest that Radical Bunny may charge on Term Notes is limited by state usury laws. Such laws impose penalties on the making of usurious loans, including unenforceability of the debt. While Radical Bunny does not intend to make loans at usurious interest rates, there are uncertainties in determining the legality of interest rates, which may be increased as the result of the total interest yield that Radical Bunny seeks on its loans.
- **General Risks of Secured Loans.** All loans under the Term Notes are subject to the risk that the Borrower may default on the on such loans. If the Borrower defaults on the Loan, the Lenders would consider the possibility of foreclosing on the collateral to protect the investment, which could result in considerable delays and expenses. The Borrower's ability to make the payments due under the Loan and the amount the Lenders may realize on foreclosure will be dependent upon the risks generally associated with real estate conditions, interest rates, real estate taxes, other operating expenses, governmental rules and fiscal policies, and acts of God.
- **Exclusion from Decision Respecting Participations.** Radical Bunny will have sole authority over all decisions relating to the Loan. Under the terms of the Agreement, the Participant will have no right to participate in Radical Bunny's decisions respecting the Loan. Further, Radical Bunny has required that it make all decisions with respect to Loan, including, but not limited to, foreclosure of any secured property upon default under the Note. There may be times in which the economic or business interests or goals of Radical Bunny and the Participant are inconsistent with each other.
- **Restrictions on Transfer.** The Agreement prohibits the Participant from selling, signing or otherwise transferring the Participant's interest in the Loan without the consent of Radical Bunny. Consequently, the Participant may have to hold its interest in the Loan indefinitely and may not be able to liquidate its investment in the Loan or pledge it as collateral for a loan in the event of emergency.

3. **Certification of Accredited Investor Status**

I certify that I am an Accredited Investor because I fall within one of the following categories:

(PLEASE CIRCLE APPROPRIATE CATEGORY)

a. **\$1,000,000 Net Worth Natural Person.**

A natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds \$1,000,000, inclusive of home, home furnishings and automobiles.

b. \$200,000 Income Natural Person.

A natural person who had "Individual Income" in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

c. Company, Corporate or Other Entity Participants.

The Participant is a partnership, corporation or unincorporated association and all of the equity owners of that entity qualify as Accredited Investors under subparagraph (a) or (b) above. Participants that check this subparagraph (c) must furnish a separate copy of this Certification for each equity owner with items (a) through (g) completed and executed on the Signature Page of this document by such equity owner.

d. Revocable or Grantor Trust.

The Participant is a revocable or grantor trust and each Person with the power to revoke the trust qualifies as an Accredited Investor under (a) or (b) above. Participants that check this subparagraph (d) must furnish a separate copy of this Certification for each Person with the power to revoke the trust with such information as the Lender requires completed and executed on the Signature Page of this document by such Person.

e. Investment Decision by Plan Fiduciary.

The Participant is an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, and the investment decision is made by a Plan fiduciary, as defined in Section 3(21) of such Act which is a bank, savings and loan association, insurance company or registered investment advisor.

f. Self-Directed Plan — Investment Decision Solely by Accredited Investor.

The Participant is a qualified profit sharing or defined contribution Plan, the Plan provides for segregated accounts for each Plan Participant, the governing documents of the Plan provide that each participant may direct the trustee to invest his or her funds in the investment vehicles of his or her choice and the participation in the Loan is made pursuant to an exercise by the Plan Participant, who is an Accredited Investor under subparagraph (a) or (b) above, of such power to direct the investments of his or her segregated account. This Certification must be completed and executed by such Plan Participant.

If I have circled item (c) or (d) above, I further represent to you as follows:

(i) Employer and Position of Person Making Investment Decision:

(ii) Prior Employment (five years) of Person Making Investment Decision:

Employer (1) _____
(2) _____

Nature of (1) _____
Duties (2) _____
Dates of (1) _____
Employment (2) _____

The undersigned, desiring to become an investor in the Participation Agreement to which this document is attached as Exhibit C, hereby executes, confirms, adopts and agrees to all the terms, conditions, representations and acknowledgments of this document.

Dated _____

Signature

Print Name

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

EXHIBIT B

1 JOHN M. McCOY III (Cal. Bar No. 166244)
Email: mccoyj@sec.gov
2 DAVID S. BROWN (Cal. Bar No. 134569)
Email: browndav@sec.gov

3 Attorneys for Plaintiff
4 Securities and Exchange Commission
Rosalind R. Tyson, Regional Director
5 Michele Wein Layne, Associate Regional Director
5670 Wilshire Boulevard, 11th Floor
6 Los Angeles, California 90036-3648
Telephone: (323) 965-3998
7 Facsimile: (323) 965-3908

8
9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF ARIZONA**

11 **SECURITIES AND EXCHANGE**
12 **COMMISSION,**

13 Plaintiff,

14 vs.

15 **RADICAL BUNNY, LLC; TOM**
16 **HIRSCH; BERTA WALDER;**
HOWARD WALDER; and HARISH P.
SHAH;

17 Defendants.

Case No. CIV-09-01560-PHX-SRB

**FED. R. CIV.P. 26(a)(1) AMENDED
INITIAL DISCLOSURES BY
PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION**

1 Pursuant to Fed. R. Civ. P. 26(a)(1)(A) and 26(e)(1), Plaintiff
2 Securities and Exchange Commission ("Commission") amends and
3 supplements its initial disclosures previously served on defendants, Radical
4 Bunny, LLC, Tom Hirsch, Berta Walder, Howard Walder, and Harish P.
5 Shah ("Defendants") on January 4, 2010 to include the additional
6 information and individuals listed by the Commission on Amended Exhibit
7 1 as likely to have discoverable information that it may use to support its
8 claims. The Commission makes the following initial disclosures based on
9 the information reasonably available to it. The Commission will supplement
10 its disclosures if required to do so pursuant to Fed. R. Civ. P. 26(e)(1).

11 **A. Individuals Likely To Have Discoverable Information**

12 Attached as Amended Exhibit 1 to this document is a list, required by
13 Fed. R. Civ. P. 26(a)(1)(A)(i), of names and, when known, addresses and
14 telephone numbers of each individual likely to have discoverable
15 information that the Commission may use to support its claims, unless solely
16 for impeachment, identifying the subjects of the information. The
17 information is accurate to the best of the Commission's knowledge, and the
18 Commission reserves the right to amend or supplement these disclosures
19 pursuant to Fed. R. Civ. P. 26(e)(1).

20 **B. Documents That May Be Used To Support Claims**

21 Attached as Exhibit 2 to this document is a description, as set forth in
22 Fed. R. Civ. P. 26(a)(1)(A)(ii), by category of all non-privileged documents
23 and electronically stored information that are in the Commission's
24 possession, custody or control that the Commission may use to support its
25 claims, unless solely for impeachment.

26 The Commission reserves the right to make additional disclosures or
27 otherwise supplement the documents and electronically stored information
28 that it may rely on for its claims pursuant to Fed. R. Civ. P. 26(e)(1). The

1 Commission also reserves the right to withhold from production all
2 documents that are the subject of appropriate privileges, including attorney-
3 client privilege, deliberative process privilege, law enforcement privilege
4 and the work product doctrine.

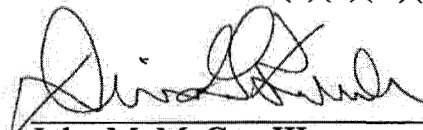
5 **C. Damages Computation**

6 The monetary relief sought by the Commission consists of
7 disgorgement, prejudgment interest and civil penalties, and not damages.
8 Accordingly, the computation and disclosure described in Fed. R. Civ. P.
9 26(a)(1)(A)(iii) is not required. The Commission reserves the right to
10 supplement the documentary evidence supporting its method for calculating
11 disgorgement pursuant to Fed. R. Civ. P. 26(e)(1).

12 **D. Insurance Agreement**

13 The Commission is unaware of any "insurance agreement under
14 which an insurance business may be liable to satisfy all or part of a possible
15 judgment in the action or to indemnify or reimburse for payments made to
16 satisfy the judgment," as described in Fed. R. Civ. P. 26(a)(1)(A)(iv).

17
18 DATED: January 5, 2010



John M. McCoy III
David S. Brown
Attorneys for Plaintiff
Securities and Exchange Commission

EXHIBIT 2

SEC v. Radical Bunny, LLC, et al.
Initial Disclosures by Plaintiff Securities and Exchange Commission
Exhibit 2

Description of Documents Produced	Category	Location	Date of Production	Bates Range Produced
Documents produced by Alliance Bank re bank accounts of Mortgages Ltd.	Hard copy	SEC Offices	8/25/2008	N/A
Arboleda Brechner produced audio recording of Berta "Bunny" Walder's sales meeting with potential investor	CD	SEC Offices	11/7/2008	N/A
Arboleda Brechner produced transcript of hearing on status of Radical Bunny bankruptcy held 10/29/2008	Hard copies	SEC Offices	11/24/2008	N/A
Arboleda Brechner produced transcript of deposition of Tom Hirsch taken in <i>In re Radical Bunny LLC</i> USBC Case No. 2:08-bk-13884-CGC;	Hard copy	SEC Offices	1/28/2009	N/A
Documents produced by Donna Hinman re her participation in Radical Bunny investments	Fax and hard copy	SEC Offices	12/6/2008	N/A
Documents produced by First Trust Company of Onaga	Hard copy	SEC Offices	8/18/2008	FTCO 1 - FTCO 14

Description of Documents Produced	Category	Location	Date of Production	Bates Range Produced
Irwin Union Bank produced bank statements, checks, and other back up documents re Mortgages Ltd. related accounts held at Irwin Union Bank	Hard copy	SEC Offices	8/27/2008	N/A
Documents produced by Irwin Union Bank re ML loan funding account documents (i.e. acct # [REDACTED])	Hard copy	SEC Offices	3/3/2009	N/A
Documents produced by Jeffrey Newman	Hard copy	SEC Offices	8/25/2008	JN-000001 - JN-000360
Supplemental documents produced by Jeffrey Newman	Hard copy	SEC Offices	8/26/2008	JN-000361 - JN-000466
Supplemental documents produced by Jeffrey Newman	Hard copy	SEC Offices	9/4/2008	JN-000467 - JN-000646
Jeffrey Newman's Post Testimony (9-11-2008) statement re contacts with Mortgages Ltd after departure from company	N/a	SEC Offices	9/26/2008	N/A
JP Morgan Chase Bank documents produced re RB commercial accounts [REDACTED], [REDACTED], [REDACTED]	Hard copy	SEC Offices	9/8/2008	N/A
Documents produced by Laura Martini	Hard copy	SEC Offices	9/15/2008	N/A

Description of Documents Produced	Category	Location	Date of Production	Bates Range Produced
Documents produced by Linda Tanton	Hard copy	SEC Offices	8/5/2008	N/A
Mayer Hoffman McCann produced audit files	DVD	SEC Offices	10/27/2008	MHM000001 - MHM021086
Documents produced by Michael Denning	Hard copy	SEC Offices	8/21/2008	MD00001 - MD00514
Documents produced by Michael Denning previously withheld as privileged; privileged log also produced	Hard copy	SEC Offices	9/18/2008	MD00527 - MD00594
Mortgages Ltd. electronically produced Employee list (Excel)	Email	SEC Offices	7/31/2008	N/A
Mortgages Ltd electronically produced Employee list (PDF)	Email	SEC Offices	8/4/2008	N/A
Mortgages Ltd. production of documents	DVDs	SEC Offices	8/13/2008	ML000000 - ML027536
Mortgages Ltd. supplemental production of documents	DVDs	SEC Offices	8/28/2008	ML027537 - ML028912

Description of Documents Produced	Category	Location	Date of Production	Bates Range Produced
Documents produced by Mortgage Ltd. re quarterly reports, etc.	Hard copy	SEC Offices	9/5/2008	ML028913 - MLML029203
Emails produced by Mortgage Ltd.	DVDs	SEC Offices	12/12/2008	ML029204 - ML120117
Emails produced by Mortgage Ltd. on 12 DVDs	DVDs	SEC Offices	12/15/2008	ML120118 - ML225174
Mortgages Ltd.'s corporate tax returns for the year ended 12/31/2007 prepared by Sarvas, King & Coleman P.C.	Hard copy	SEC Offices		N/A
Supplemental documents and privileged log produced by Phillip Sollomi	Hard copy - via email	SEC Offices	9/9/2008	PS000508
Documents produced by Quarles & Brady re Radical Bunny	CDs	SEC Offices	12/5/2008	Q&B-SEC 000001 - Q&B-SEC 002841
Documents voluntarily produced by Quarles & Brady re (1) QB's Interwoven document management system; (2) Robert Bornhoft docs; (3) Katea Ravega fka Katea Frey; (4) Jody Squires re Gary Shullaw	CDs	SEC Offices	1/6/2009	Q&B-SEC-INT 000001-E - 161-E; Q&B-SEC-RB 000001-E - 600-E; Q&B-SEC-KF 000001-E - 977-E; Q&B-SEC-JS 000001-E - 259-E

Description of Documents Produced	Category	Location	Date of Production	Bates Range Produced
Supplemental production by Quarles & Brady	DVD	SEC Offices	2/13/2009	Q&B-SEC-RB 00601-E - 1441-E; Q&B-SEC-SB 000001-E - 04-E; Q&BSEC-JH 000001-E - 061-E; Q&B-SEC-DP 000001-E - 013-E; Q&B-SEC-RM 000001-E; Q&B-SEC-JF 000001-E - 04-E
Documents collected from Quarles partner Robert Bornhoft, discovered by his secretary and with the exception of 000017 - 18 all previously produced	DVD	SEC Offices	7/9/2009	Q&B-SEC-RB 000017 - 000113
Documents produced by Radical Bunny	CDs	SEC Offices	8/6/2008	RB00001 - RB00126 (Disk 1); RBPf000001 - RBPf010345 (Disk 2); RBLD000001 - RBLD010448 (Disk 3)
Replacement and corrected documents from previous Radical Bunny production	CD	SEC Offices	8/13/2008	RB06212 - RB06215; RB00022 - RB00093
Statement of Account information produced by Radical Bunny	CD	SEC Offices	8/21/2008	RB00123 - RB061708
Bank statements produced by Radical Bunny	CD	SEC Offices	9/16/2008	RB06216 - RB06801
Disbursements produced by Radical Bunny	CD	SEC Offices	9/17/2008	RB06802 - RB08302
Checks produced by Radical Bunny	CD	SEC Offices	9/18/2008	RB08303 - RB31335

Description of Documents Produced	Category	Location	Date of Production	Bates Range Produced
Bank deposits produced by Radical Bunny	CD	SEC Offices	9/19/2008	RB31336 - RB39765
Radical Bunny produced Horizon Partner closed loan documents	CD	SEC Offices	10/21/2008	RB39766 - RB55383
Radical Bunny produced documents from Radical Bunny's counsel - partial Quarles & Brady documents	Hard copy	SEC Offices	11/6/2008	Various numbers with Prefix RBQB and Qbfile; also SECLA3521.RB
IRA files for various investors produced by Radical Bunny	CD	SEC Offices	11/11/2008	RB55384 - RB64273
Radical Bunny production of letters to and from the Quarles law firm re demand for payment and conflict of interest	CD/Hard copy	SEC Offices	11/11/2008	N/A
Radical Bunny produced audio recording of Berta "Bunny" Walder's sales meeting with potential investor	CD	SEC Offices	12/3/2008	N/A
Documents produced by Radical Bunny consisting of miscellaneous documents contained in RB's files	CD	SEC Offices	12/3/2008	RB70399 - RB94861

Description of Documents Produced	Category	Location	Date of Production	Bates Range Produced
Radical Bunny produced transcript of audio recording of Berta "Bunny" Walder's sales meeting with potential investor	Hard copy Transcript	SEC Offices	12/3/2008	N/A
Radical Bunny produced tax documents for 2001 - 2007	CD	SEC Offices	12/17/2008	RB64274 - RB70398
Documents produced by Radical Bunny	Hard copy	SEC Offices	12/17/2008	HIRSCH 1- HIRSCH 76
Documents produced by Radical Bunny consisting of Quarles & Brady documents contained in RB's files	CD	SEC Offices	12/23/2008	QBFILES00001 - QBFILES03180
Documents produced by Radical Bunny re Radical Bunny website	Hard copy	SEC Offices		N/A

Description of Documents Produced	Category	Location	Date of Production	Bates Range Produced
Documents from Todd Brown	DVD	SEC Offices	9/5/2008	00001 - 00109
Documents produced by Veronica Sas; Background questionnaire and documents	Hardcopy docs produced via email	SEC Offices	9/4/2008	VA 00001 - VS 00105
SEC copies of corporate filings		SEC Offices		N/A
All transcripts of witness testimony and exhibits thereto taken in the related SEC non-public investigation in re Mortgages Ltd.	CD	SEC Offices	various	N/A
Documents produced by mortgage broker, Alan Band	PDF	SEC Offices		N/A
Excel documents re personnel names produced by Mortgages Ltd. auditor	Excel spreadsheet	SEC Offices		N/A
Berta Walder emails	PDF	SEC Offices	1/26/2009	N/A
Documents produced by Roberta Heneisen	PDF	SEC Offices		N/A
Documents produced by Hirsch & Shah	Hard copy/PDF	SEC Offices	11/17/2008	1 - 76
Incorporation records regarding Horizon Partners, Mortgages Ltd., and Radical Bunny, LLC	Website/PDF	SEC Offices		N/A
Miscellaneous corporate records re Mortgages Ltd., Radical Bunny LLC	Website/PDF			N/A

1 **PROOF OF SERVICE**

2 I am over the age of 18 years and not a party to this action. My business
3 address is:

4 ☒ U.S. SECURITIES AND EXCHANGE COMMISSION, 5670
5 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036-3648

6 Telephone No. (323) 965-3998; Facsimile No. (323) 965-3908.

7 On January 5, 2010, I served the document entitled **FED. R. CIV.P.
8 26(a)(1) AMENDED INITIAL DISCLOSURES BY PLAINTIFF
9 SECURITIES AND EXCHANGE COMMISSION** on all the parties to
10 this action addressed as stated on the attached service list:

11 ☐ OFFICE MAIL: By placing in sealed envelope(s), which I placed for
12 collection and mailing today following ordinary business practices. I
13 am readily familiar with this agency's practice for collection and
14 processing of correspondence for mailing; such correspondence would
15 be deposited with the U.S. Postal Service on the same day in the
16 ordinary course of business.

17 ☐ PERSONAL DEPOSIT IN MAIL: By placing in sealed
18 envelope(s), which I personally deposited with the U.S. Postal
19 Service. Each such envelope was deposited with the U.S.
20 Postal Service at Los Angeles, California, with first class
21 postage thereon fully prepaid.

22 ☐ EXPRESS U.S. MAIL: Each such envelope was deposited in a
23 facility regularly maintained at the U.S. Postal Service for
24 receipt of Express Mail at Los Angeles, California, with
25 Express Mail postage paid.

26 ☐ HAND DELIVERY: I caused to be hand delivered each such
27 envelope to the office of the addressee as stated on the attached
28 service list.

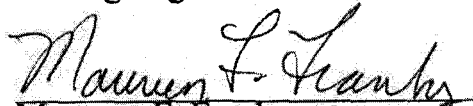
☐ FEDERAL EXPRESS: By placing in sealed envelope(s) designated
by Federal Express with delivery fees paid or provided for, which I
deposited in a facility regularly maintained by Federal Express or
delivered to a Federal Express courier, at Los Angeles, California.

☒ ELECTRONIC MAIL: By transmitting the document by electronic
mail to the electronic mail address as stated on the attached service
list.

☐ FAX: By transmitting the document by facsimile transmission. The
transmission was reported as complete and without error.

☒ (Federal) I declare that I am a member of the bar of this Court. I
declare under penalty of perjury that the foregoing is true and correct.

Date: January 5, 2010


Maureen F. Franks

SEC v. RADICAL BUNNY, LLC, et al.
United States District Court – District of Arizona
Case No. CIV-09-01560-PHX-SRB
(LA-3521)

SERVICE LIST

Bruce R. Heurlin, Esq. (served by electronic mail only)
Kevin M. Sherlock, Esq. (served by electronic mail only)
Eric J. McNeilus, Esq. (served by electronic mail only)
Heurlin Sherlock Panahi
1636 N. Swan Road, Suite 200
Tucson, AZ 85712-4096
Email: BHeurlin@HSPatlaw.com
Email: KSherlock@HSPatlaw.com
Email: EMcNeilus@HSPatlaw.com
*Attorneys for Defendants Tom Hirsch, Berta Walder, Howard
Walder, and Harish P. Shah*

Jordan A. Kroop, Esq. (served by electronic mail only)
Squire, Sanders & Dempsey L.L.P.
Two Renaissance Square
40 North Central Avenue, Suite 2700
Phoenix, AZ 85004
Email: jkroop@ssd.com
*Attorneys for Chapter 11 Trustee G. Grant Lyon, Trustee for
Defendant Radical Bunny, LLC*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

EXHIBIT C

Julie Coleman

From: Kroop, Jordan A. [Jordan.Kroop@ssd.com]
Sent: Tuesday, August 02, 2011 4:44 PM
To: Julie Coleman
Subject: RE: Radical Bunny

Julie -- Greenberg Traurig's counsel, Williams & Connolly, issued a subpoena to Grant, but Grant didn't have literally anything and we told them that. As a result, they got a voluntary production of docs from Richard Lorenzen, counsel for Reorganized Radical Bunny, which Richard got from Tony Freeman (who had been Radical Bunny's previous counsel before Grant was appointment and who always had the business records of Radical Bunny. Grant never did. That production probably occurred within the last few days. I have no idea what was in it and never saw it.

No one -- not Hirsch, not anyone -- sought access to Radical Bunny records during the time Grant was trustee. Nothing precluded them from doing so; they just didn't.

Hope this helps.

From: Julie Coleman [mailto:jcoleman@azcc.gov]
Sent: Tuesday, August 02, 2011 4:25 PM
To: Kroop, Jordan A.
Subject: Radical Bunny

Jordan:

Mr. LaVelle has requested that the Administrative Law Judge re-open the administrative hearing to consider certain documents that were obtained pursuant to a subpoena duces tecum directed to Grant Lyon, as Trustee of Radcial Bunny, and issued on behalf of the Plaintiffs in the class action lawsuit, Facciola, et al v. Greenberg Traurig, LLP, et al. Can you please tell me when that occurred?

Also, did either Mr. Hirsch or anyone else on behalf of any of the Radical Bunny managers seek access to the records of Radical Bunny, formally or informally, during the time in which Mr. Lyon was engaged as the Trustee of Radical Bunny?

Thank you in advance for your cooperation.

Regards,

Julie Coleman
Chief Counsel of Enforcement
Arizona Corporation Commission, Securities Division
1300 W. Washington St., Third Floor
Phoenix, AZ 85007
Direct Phone: (602) 542-0639
Email: jcoleman@azcc.gov

8/2/2011

===== This footnote confirms that this email
message has been scanned to detect malicious content. If you experience problems, please e-mail
postmaster@azcc.gov =====

This message is confidential and may be legally privileged or otherwise protected from disclosure. If
you are not the intended recipient, please telephone or email the sender and delete this message and any
attachment from your system; you must not copy or disclose the contents of this message or any
attachment to any other person.

Squire, Sanders & Dempsey (US) LLP is part of the international legal practice Squire, Sanders &
Dempsey, which operates worldwide through a number of separate legal entities. Please visit
www.ssd.com for more information.

#SSDUS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

EXHIBIT D

1 SHELTON L. FREEMAN (AZ #009687)

2 **DECONCINI McDONALD YETWIN & LACY, P.C.**

3 6909 East Main Street
4 Scottsdale, Arizona 85251

4 Ph: (480) 398-3100

5 Fax: (480) 398-3101

5 E-mail: tfreeman@lawdmyl.com

6 Special Counsel for Chapter 11 Trustee and
7 Special Counsel for Debtor

8 **IN THE UNITED STATES BANKRUPTCY COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10 In re:

11 RADICAL BUNNY, L.L.C.,

12 Debtor.

In Proceedings Under Chapter 11

Case No.: 2:08-bk-13884-CGC

**NOTICE OF LODGING STIPULATED
ORDER GRANTING APPLICATION
FOR ORDER ALLOCATING
PROCEEDS OF SUBSTANTIAL
CONTRIBUTION CLAIM TO
DeCONCINI McDONALD YETWIN &
LACY, P.C. AND RB LIQUIDATION,
LLC**

(Related DE's 1197, 1198 and 1202)

19 NOTICE IS HEREBY GIVEN that on this date Debtor has lodged the
20 "Stipulated Order Granting Application for Order allocating Proceeds of Substantial
21 Contribution Claim to DeConcini McDonald Yetwin & Lacy, P.C. and RB
22 Liquidation, LLC", attached hereto.

23 DATED this 7th day of June, 2011.

24 DECONCINI McDONALD YETWIN & LACY, P.C.

25 BY /s/ SHELTON L. FREEMAN

26 Shelton L. Freeman

27 Special Counsel for Chapter 11 Trustee and
28 Special Counsel for Debtor

1 COPIES sent via the U.S. Bankruptcy
2 Court's ECF noticing system this
7th day of June, 2011.

3 COPIES sent via e-mail this
4 7th day of June, 2011, to:

5 Larry Lee Watson
6 Office of the U.S. Trustee
7 230 North First Avenue, Suite 204
8 Phoenix, Arizona 85003-1706
Larry.Watson@usdoj.gov

9 Richard M. Lorenzen (006787)
10 Perkins Coie LLP
RLorenzen@perkinscoie.com
11 Counsel for RB Liquidation Manager Corp.

12 Mark J. Dorval, Esq.
13 Stradley Ronon Stevens & Young LLP
mdorval@stradley.com
14 Attorneys for ML Liquidating Trustee

15 Thomas Salerno
16 Jordan A. Kroop
17 Squire, Sanders & Dempsey LLP
tsalerno@ssd.com
jkroop@ssd.com
18 Attorneys for G. Grant Lyon, Ch. 11 Trustee

19 Thomas H. Allen
20 Paul Sala
21 Allen, Sala & Bayne, PLC
tallen@asbazlaw.com
psala@asbazlaw.com
22 Attorneys for Radical Bunny, LLC

23
24 By /s/ Kara Gibson Schrader

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:

RADICAL BUNNY, L.L.C.,

Debtor.

In Proceedings Under Chapter 11

Case No. 2:08-bk-13884-CGC

**STIPULATED ORDER GRANTING
APPLICATION FOR ORDER
ALLOCATING PROCEEDS OF
SUBSTANTIAL CONTRIBUTION
CLAIM TO DeCONCINI McDONALD
YETWIN & LACY, P.C. AND RB
LIQUIDATION, LLC**

(Related DE's 874, 1197 & 1198)

This matter came before the Court pursuant to the "Application for Order Allocating Proceeds of Substantial Contribution Claim to DeConcini McDonald Yetwin & Lacy, P.C. and RB Liquidation, LLC" (the "Application"), DE 1197, filed by the law firm of DeConcini McDonald Yetwin & Lacy, P.C. ("DMYL").

The Court, having considered the Application, and this Court's "Order Granting First and Final Application of DeConcini McDonald Yetwin & Lacy, P.C., For Allowance and Payment of Fees and Expenses For Services Rendered As Special Counsel For Debtor and the Trustee of Radical Bunny, LLC In Part and

1 Reserving Ruling In Part and Request to Vacate Hearing", DE 874, a hearing
2 having been held on June 7, 2011 at 11:00 a.m., and good cause appearing
3 therefore,

4 IT IS HEREBY ORDERED:

5 Approving the distribution and payment of the \$400,000 Settlement Payment
6 and allocation of the remaining Substantial Contribution Claim, as follows:

- 7 1. DMYL is entitled to the distribution and payment of \$220,113 from
8 the Settlement Payment directly from escrow consisting of the
9 Fees/Costs Award, and the pro-rata allocation of the Substantial
10 Contribution Award, subject to the 15% holdback to RB Liquidation,
11 LLC;
- 12 2. RB Liquidation, LLC is entitled to the distribution and payment of
13 \$179,887 from the Settlement Payment directly from escrow,
14 consisting of its pro-rata allocation of the Substantial Contribution
15 Award and the holdback amounts.
- 16 3. In the event the Liquidating Trust pays any additional sums under
17 the Substantial Contribution Award, those amounts will be allocated
18 and distributed (and paid by the Liquidating Trust), 52% to RB
19 Liquidation, LLC, and 48% to DMYL (subject to the 15% holdback
20 to RB Liquidation, LLC).
- 21 4. DMYL shall be entitled to the amounts provided in this Order in lieu
22 of any additional claims for compensation from RB Liquidation, LLC
23 related to the Substantial Contribution Claim, or any other matter,
24 other than DMYL's allowed Administrative Claim in the amount of
25 \$768,618.73 (DE 874).

26 ///

27 ///

1 5. RB Liquidation, LLC agrees that it will use its best efforts to make a
2 pro-rata distribution to allowed Administrative Claims of available
3 funds on or before July 6, 2011.
4

5 ORDERED, SIGNED AND DATED ABOVE.

6 APPROVED AS TO FORM:
7
8
9

10 PERKINS COIE BROWN & BAIN P.A.

DeCONCINI McDONALD YETWIN &
LACY, P.C.

11
12 By: /s/ Richard M. Lorenzen

13 Richard M. Lorenzen
14 Counsel for RB Liquidation, LLC
15
16
17
18
19
20
21
22
23
24
25
26
27

By: /s/ Shelton L. Freeman

Shelton L. Freeman
Special Counsel for Chapter 11
Trustee and Special Counsel for
Debtor

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

EXHIBIT E

Radical Bunny, LLC

June 30, 2008

VIA ELECTRONIC & U.S. MAIL

Christian J. Hoffman
Quarles & Brady, LLP
One Renaissance Square,
Two North Central Avenue
Phoenix, AZ 85004-2391
choffman@quarles.com


Re: Release of Radical Bunny, LLC Files

Dear Mr. Hoffman:

Please release the complete Radical Bunny, LLC file to Shelton L. Freeman of DeConcini McDonald Yetwin & Lacy, P.C., attorney for Radical Bunny. To expedite matters, please contact Mr. Freeman's administrative assistant, Melissa Archibald, at 602-282-0462 to arrange the details of transferring your file.

Thank you for your assistance in this matter.

Sincerely,



Tom Hirsch, CPA

cc: Shelton Freeman
Bob Bornhoff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

EXHIBIT F

MICHAEL K. JEANES
Clerk of the Superior Court
By Kristy Kee, Deputy
Date 10/19/2010 Time 16:37:58

Description	Amount
CASE# CV2010-098270	
CIVIL NEW COMPLAINT	301.00
TOTAL AMOUNT	301.00
Receipt# 20907974	

1 DECONCINI McDONALD YETWIN & LACY, P.C.
2 2525 EAST BROADWAY BLVD., SUITE 200
3 TUCSON, AZ 85716-5300
4 (520) 322-5000
5 Mark D. Lammers (AZ # 010335)
6 Email: mlammers@dmyl.com

7 HEURLIN SHERLOCK PANAH
8 1636 North Swan Road, Suite 200
9 Tucson, Arizona 85712-4096
10 Telephone (520) 319-1200
11 Bruce R. Heurlin (AZ # 003214)
12 Email: bheurlin@hspatlaw.com

13 Attorneys for Plaintiff

14 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

15 **IN AND FOR THE COUNTY OF MARICOPA**

CV2010-098270

16 RB LIQUIDATION, LLC, an Arizona
17 limited liability company,

Case No.

**COMPLAINT
(PROFESSIONAL (LEGAL)
NEGLIGENCE)**

18 Plaintiff,

19 vs.

20 QUARLES & BRADY, LLP, a limited
21 liability partnership, ROBERT S.
22 BORNHOFT and JANE DOE BORNHOFT,
23 husband and wife; CHRISTIAN J.
24 HOFFMANN, III and JANE DOE
25 HOFFMANN, husband and wife, P.
26 ROBERT MOYA and JANE DOE MOYA,
husband and wife; and S. GARY
SHULLAW and JANE DOE SHULLAW,
husband and wife,

Defendants.

RB Liquidation, LLC alleges:

PARTIES, VENUE, AND JURISDICTION

1. RB Liquidation, LLC is responsible for collecting money for those investors

1 who invested with the bankrupt Radical Bunny, LLC (Radical Bunny), an Arizona limited
2 liability company that did business in Maricopa County, Arizona.

3 2. Quarles & Brady, LLP (Quarles) is a law firm organized as a Wisconsin
4 limited liability partnership doing business in Maricopa County, Arizona, and in other parts
5 of the country, in Illinois, Wisconsin, and Florida.

6 3. Robert S. Bornhoft (Bornhoft) is a lawyer licensed to practice in the State of
7 Arizona who is and was employed as a lawyer at Quarles in Phoenix, Arizona, at all times
8 relevant to this Complaint. On information and belief, Bornhoft is a resident of Maricopa
9 County, Arizona.

10 4. Jane Doe Bornhoft is the spouse of Robert S. Bornhoft. All acts committed by
11 Robert S. Bornhoft were done for the benefit of the Bornhoft marital community.

12 5. Christian J. Hoffmann, III (Hoffmann) is a lawyer licensed to practice in the
13 State of Arizona who is and was employed by Quarles in Phoenix, Arizona, at all times
14 relevant to this Complaint. On information and belief, Hoffmann is a resident of Maricopa
15 County, Arizona.

16 6. Jane Doe Hoffmann is the spouse of Christian J. Hoffmann, III. All acts
17 committed by Christian J. Hoffmann, III were done for the benefit of the Hoffmann marital
18 community.

19 7. P. Robert Moya (Moya) is a lawyer licensed to practice in the State of
20 Arizona who is and was employed as a lawyer at Quarles in Phoenix, Arizona, at all times
21 relevant to this Complaint. On information and belief, Moya is a resident of Maricopa
22 County, Arizona.

23 8. Jane Doe Moya is the spouse of P. Robert Moya. All acts committed by P.
24 Robert Moya were done for the benefit of the Moya marital community.

25 9. S. Gary Shullaw (Shullaw) is a lawyer licensed to practice in the State of
26

1 Arizona who was employed as a lawyer at Quarles in Phoenix, Arizona, at all times relevant
2 to this complaint. On information and belief, Shullaw is a resident of Maricopa County,
3 Arizona.

4 10. Jane Doe Shullaw is the spouse of S. Gary Shullaw. All acts committed by S.
5 Gary Shullaw were done for the benefit of the Shullaw marital community.

6 11. Each of the above Quarles lawyers provided legal services to Radical Bunny
7 regarding Radical Bunny's legal issues.

8 12. Each of the above Quarles lawyers shared information and legal opinions
9 regarding Radical Bunny with each other, as Quarles and the Quarles lawyers represented
10 Radical Bunny.

11 13. This Court has jurisdiction and venue over all of the parties and the subject
12 matter.

13 **GENERAL ALLEGATIONS**

14 14. Radical Bunny realleges all prior paragraphs.

15 15. Radical Bunny was at all times relevant to this Complaint engaged in placing
16 Radical Bunny's investors' money with Mortgages, Ltd. for loans made by Mortgages, Ltd.
17 to real estate developers. The activity described in this paragraph is hereinafter referred to
18 as "Radical Bunny's business."

19 16. Quarles offers its clients legal services in the areas of corporate finance and
20 state and federal securities laws, including, but not limited to:

21 a. Corporate governance, including compliance advice under state and
22 federal laws and regulatory advice to directors regarding fiduciary duties;

23 b. Public offerings of equity, debt, and hybrid securities in initial public
24 offerings, subsequent offerings, and offerings under shelf registration statements;

25 c. Exempt offerings, including exemptions from registration and
26

1 preparation of disclosure documents in private placements, and Rule 144A offerings; and

2 d. Securities and Exchange Commission (SEC) reporting and advice
3 regarding disclosure obligations in formal and informal disclosures.

4 e. Other areas of corporate finance, real estate, and securities laws.

5 17. From early 2007 to June 10, 2008, Quarles and the Quarles lawyers named as
6 defendants (the Quarles lawyers) represented Radical Bunny.

7 18. In late 2006, Radical Bunny was informed by non-Quarles lawyers that
8 Radical Bunny may have securities laws issues regarding Radical Bunny's business.

9 19. One of the above non-Quarles lawyers referred Radical Bunny to Quarles to
10 advise Radical Bunny on Radical Bunny's business, including securities law issues.

11 20. In January, 2007, Radical Bunny retained Quarles and the Quarles lawyers as
12 its lawyers to obtain legal advice regarding Radical Bunny's business, because Radical
13 Bunny was concerned about legal issues and wanted Quarles and the Quarles lawyers to
14 solve Radical Bunny's legal issues.

15 21. Quarles' February 28, 2007, written statement of representation (*Exhibit 1*),
16 signed by Hoffmann for Quarles, defined the scope of Quarles' representation of Radical
17 Bunny, pursuant to Ethical Rule 1.5(b), Rule 42, Rules of the Supreme Court of Arizona.

18 22. The above written statement was done after Quarles and the Quarles lawyers
19 knew of Radical Bunny's legal issues.

20 23. Quarles' above written statement never was changed by any subsequent
21 writing. (See, note 2 of Ethical Rule 1.5(b), Rule 42, Rules of the Supreme Court of
22 Arizona.)

23 24. Quarles and the Quarles lawyers informed Radical Bunny that Quarles and
24 the Quarles lawyers were competent to render legal advice related to corporate matters and
25 securities laws.

1 25. In January, 2007, Radical Bunny retained Quarles and the Quarles lawyers as
2 Radical Bunny's lawyers for all purposes, including Quarles' and the Quarles lawyers' legal
3 analysis of all legal issues regarding Radical Bunny's business and, specifically, all Arizona
4 and federal securities laws issues.

5 26. In January, 2007, Radical Bunny retained Quarles and the Quarles lawyers to
6 obtain legal advice regarding Radical Bunny's business and Arizona and federal securities
7 laws.

8 27. At the beginning of this representation, Radical Bunny provided to Quarles
9 and the Quarles lawyers Radical Bunny business documents and a description of how
10 Radical Bunny's business operated.

11 28. As part of its representation of Radical Bunny, Quarles and the Quarles
12 lawyers reviewed Radical Bunny's business operations, documents, publicly recorded
13 documents, documents filed with Maricopa County and the State of Arizona, and personally
14 met with and had telephone conversations with the members of Radical Bunny.

15 29. Quarles and the Quarles lawyers reviewed Radical Bunny's documents
16 related to how Radical Bunny's investors did business with Radical Bunny and how Radical
17 Bunny did business with Mortgages, Ltd.

18 30. Quarles and the Quarles lawyers gave Radical Bunny legal advice as to
19 Radical Bunny's business relationships with both Radical Bunny's investors and with
20 Mortgages Ltd.

21 31. On May 4, 2007, Quarles and the Quarles lawyers sent Radical Bunny the
22 Radical Bunny, LLC Questionnaire, attached as *Exhibit 2*.

23 32. On May 23, 2007, Quarles and the Quarles lawyers sent Radical Bunny an
24 "Investor Subscription Procedures" form, with an attached diagram (*Exhibit 3*), that
25 described the relationships between investors, Radical Bunny, and Mortgages, Ltd. and was
26

1 for "new investors." (Emphasis added.)

2 33. During the summer months of 2007, Quarles and the Quarles lawyers sent
3 Radical Bunny new legal documents for Radical Bunny to continue Radical Bunny's
4 ongoing business.

5 34. The legal documents in paragraphs 31, 32, and 33 were used for Radical
6 Bunny's business, with existing Radical Bunny investors and new investors in Radical
7 Bunny from May, 2007, to early June, 2008.

8 35. During the time that Quarles and the Quarles lawyers represented Radical
9 Bunny, Quarles and the Quarles lawyers performed legal research regarding the business,
10 real estate, and securities laws' effect on Radical Bunny's business.

11 36. During the time that Quarles and the Quarles lawyers represented Radical
12 Bunny, Quarles and the Quarles lawyers knew or should have known that Radical Bunny's
13 business was in violation of Arizona and/or federal securities laws.

14 37. Despite Quarles' and the Quarles lawyers' knowledge that Radical Bunny's
15 business with Radical Bunny investors violated Arizona and/or federal securities laws,
16 Quarles and the Quarles lawyers never advised Radical Bunny of those violation(s) in
17 writing and Quarles and the Quarles lawyers did not terminate their attorney-client
18 relationships with Radical Bunny.

19 38. During all of the time that Quarles and the Quarles lawyers represented
20 Radical Bunny, Quarles and the Quarles lawyers knew that Radical Bunny continued to do
21 business with Radical Bunny's investors and with Mortgages, Ltd.

22 39. Quarles and the Quarles lawyers assisted Radical Bunny with Radical
23 Bunny's periodic meetings with Radical Bunny's investors, as to admittance of attendees to
24 the meetings and the content of Radical Bunny's presentations to Radical Bunny's
25 investors.

1 40. At no point during Quarles' and the Quarles lawyers' representation of
2 Radical Bunny did Quarles and the Quarles lawyers instruct or advise Radical Bunny or any
3 of Radical Bunny's members to stop Radical Bunny's business with Radical Bunny's
4 investors.

5 41. At no point during Quarles' and the Quarles lawyers' representation of
6 Radical Bunny did Quarles or the Quarles lawyers instruct or advise Radical Bunny or any
7 of Radical Bunny's members that Radical Bunny stop violating Arizona and/or federal
8 securities laws.

9 42. At no point during Quarles' and the Quarles lawyers' representation of
10 Radical Bunny did Quarles or the Quarles lawyers prepare or even propose any liquidation
11 and/or rescission plan for Radical Bunny to stop Radical Bunny's business with either
12 Radical Bunny investors or with Mortgages, Ltd.

13 43. If Quarles and the Quarles lawyers prepared a liquidation and/or rescission
14 plan for Radical Bunny to stop Radical Bunny's business during the time of a favorable real
15 estate market in Maricopa County, Arizona, Radical Bunny would not have lost
16 \$189,800,867.00 and would not have been forced into bankruptcy.

17 44. Although Quarles and the Quarles lawyers were concerned about whether
18 Radical Bunny's loans to Mortgages, Ltd. were secured and the collateralization perfected,
19 Quarles and the Quarles lawyers never instructed Radical Bunny to disclose that concern to
20 Radical Bunny investors and stop selling to new or existing Radical Bunny investors.

21 45. In approximately late 2007, Quarles and the Quarles lawyers advised Radical
22 Bunny that Radical Bunny was legally required to do business with Radical Bunny's
23 investors pursuant to a Private Offering Memorandum (POM).

24 46. In approximately May, 2008, Quarles and the Quarles lawyers advised
25 Radical Bunny that Radical Bunny was legally required to do business with Radical
26

1 Bunny's investors pursuant to a POM.

2 47. Quarles' and the Quarles lawyers' above legal advice to Radical Bunny in
3 approximately late 2007 and May, 2008, was that a POM was required for Radical Bunny
4 to comply with Arizona and/or federal securities laws.

5 48. Because the business of Radical Bunny in approximately late 2007 and in
6 May, 2008, was not significantly different than in early 2007, when Radical Bunny first
7 retained Quarles and the Quarles lawyers as Radical Bunny's lawyers, if a POM was
8 required in approximately late 2007 and in May, 2008, then a POM was required in early
9 2007.

10 49. Quarles and the Quarles lawyers never completed a POM for Radical Bunny.

11 50. By letter dated June 10, 2008, Quarles fired Radical Bunny as Quarles' client
12 and refused to further represent Radical Bunny.

13 51. In Quarles' June 10, 2008, letter to Radical Bunny (*Exhibit 4*) signed by
14 Bornhoft, Quarles stated, in part, that Quarles' "... advice expressly dealt with procedures
15 necessary to comply with securities laws going forward, correcting information and
16 documentation previously provided to Radical Bunny's customers, addressing its collateral
17 position and addressing various licensing issues and banking regulations."

18 52. Quarles' June 10, 2008, letter did not claim that Quarles or the Quarles
19 lawyers ever advised Radical Bunny to stop violating Arizona and/or federal laws.

20 53. On June 10, 2008, Quarles and the Quarles lawyers abruptly abandoned
21 Radical Bunny as their client.

22 54. Quarles and the Quarles lawyers billed Radical Bunny thousands of dollars
23 for many hours of alleged Quarles legal services, plus costs.

24 55. Of the hours billed to Radical Bunny by Quarles and the Quarles lawyers,
25 hours allegedly were for legal research, analysis, or discussions of business, real estate, and
26

1 securities laws issues.

2 56. Radical Bunny paid Quarles and the Quarles lawyers thousands of dollars for
3 Quarles' alleged costs and legal services billed by Quarles.

4 57. On April 28, 2010, the Arizona Corporation Commission entered an Order to
5 Cease and Desist, Order for Restitution and Consent to Same against Radical Bunny
6 because of violations by Radical Bunny of Arizona securities laws, that occurred during the
7 time that Quarles and the Quarles lawyers represented Radical Bunny.

8 58. The above Order requires Radical Bunny to pay \$189,800,867.00 plus interest
9 at 10 per cent per annum.

10 59. The above order was proximately caused by Quarles' and the Quarles
11 lawyers' legal negligence.

12 60. Mortgages, Ltd. filed for bankruptcy in the United States Bankruptcy Court in
13 the District of Arizona, Case No. 2:08-bk-07465-RJH.

14 61. Petitioning creditors placed Radical Bunny into involuntary bankruptcy, that
15 was converted to a voluntary bankruptcy, Case No. 2:08-bk-13884-CEC.

16 62. On May 7, 2010, the U.S. Bankruptcy Court entered Findings of Fact,
17 Conclusions of Law, and Order Confirming Amended Plan of Reorganization.

18 63. This Complaint is timely filed pursuant to 11 U.S.C. 108.

19 **COUNT 1—NEGLIGENCE**

20 64. Radical Bunny realleges all prior paragraphs.

21 65. Radical Bunny and Quarles and the Quarles lawyers had attorney-client
22 relationships that imposed upon Quarles and the Quarles lawyers the duties to exercise that
23 degree of skill, knowledge, and care commonly exercised by members of the legal
24 profession in good standing.

25 66. Quarles and the Quarles lawyers breached Quarles' and the Quarles lawyers'
26

1 duties to Radical Bunny by failing to inform Radical Bunny or any of Radical Bunny's
2 members that Radical Bunny's business violated Arizona and/or federal securities laws.

3 67. Quarles and the Quarles lawyers breached Quarles' and the Quarles lawyers'
4 duties to Radical Bunny by failing to counsel Radical Bunny to stop the Radical Bunny
5 business because Radical Bunny's business violated Arizona and/or federal securities laws.

6 68. Quarles and the Quarles lawyers breached Quarles' and the Quarles lawyers'
7 duties to Radical Bunny by failing to counsel Radical Bunny on how to plan for Radical
8 Bunny to stop Radical Bunny's business with Radical Bunny investors and/or with
9 Mortgages, Ltd. by any liquidation and/or rescission plan.

10 69. Quarles and the Quarles lawyers breached Quarles' and the Quarles lawyers'
11 duties to Radical Bunny by failing to implement a POM for Radical Bunny to legally
12 continue to do business.

13 70. Quarles and the Quarles lawyers breached their duties to Radical Bunny by
14 assisting Radical Bunny to continue to do business with Radical Bunny investors and
15 Mortgages, Ltd.

16 71. Quarles and the Quarles lawyers breached Quarles' and the Quarles lawyers'
17 duties to Radical Bunny in other ways.

18 72. As a direct and proximate result of Quarles' and the Quarles lawyers'
19 breaches of duties to Radical Bunny and their legal negligence, Radical Bunny was
20 damaged.

21 73. Pursuant to A.R.S. 12-2602, Plaintiff certifies that expert opinion testimony is
22 required to prove legal negligence of Defendants.

23 WHEREFORE, Radical Bunny demands judgment in its favor and against Quarles,
24 Bornhoft, Hoffmann, Moya, and Shullaw for:

25 A. \$189,800,867.00 plus interest at 10 per cent per annum from April 28, 2010;
26

DECONCINI McDONALD YETWIN & LACY, P.C.
2525 East Broadway Blvd., Suite 200
Tucson, AZ 85716-5300

- 1 B. Plus compensatory damages in an amount to be determined at trial;
2 C. Disgorgement of all costs and attorneys fees paid by Radical Bunny to
3 Quarles and the Quarles lawyers during the course of Quarles' and the
4 Quarles lawyers' representation of Radical Bunny;
5 D. Costs incurred in this action;
6 E. Such other and further relief as the Court deems proper.

7
8 Dated 10-19, 2010.

9 DECONCINI McDONALD YETWIN & LACY, P.C.

10 By: 

11 Mark D. Lammers
12 2525 E. Broadway Blvd., Suite 200
13 Tucson, AZ 85716-5300

14 HEURLIN SHERLOCK PANNAHI

15 By: 

16 Fob- Bruce R. Heurlin
17 1636 North Swan Road, Suite 200
18 Tucson, AZ 85712-4096

19 Attorneys for Plaintiff
20
21
22
23
24
25
26